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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 580

S. B. LAWRENCE, ET AL., Appellants,

VS.

STATE TAX COMMISSION, ET AL.

STATEMENT AND BRIEF FOR APPELLANTS.

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STATEMENT AND BRIEF FOR APPELLANTS.

B.

Reference to the Official Report of the Opinion Delivered in the Court Below.

This case has not been officially reported, but will be found, *S. B. Lawrence et al v. Mississippi State Tax Commission*, 137 So. 503.

C.

Statement of Jurisdiction.

Paragraph 1 Rule 12, has heretofore been complied with, and this Court certified that the case is one of probable jurisdiction.

D.

Summary of Statement of the matters Involved.

Chapter 132, Mississippi legislature 1924, being Section 5027, Mississippi 1930 Code, contains the following language:

> "5027. Imposition of the tax. There is hereby assessed and levied to be collected and paid as hereinafter provided for the calendar year 1930 and for each calendar year thereafter, upon the entire net income of every resident individual, corporation, association, trust or estate, in excess of the credits provided, a tax at the following rates: On the first $2000.00 of taxable

income, or any part thereof, at the rate of two and one-half per centum; on the next $3000.00 of taxable income, or any part thereof, at the rate of three and one-half per centum; on the next $10,000.00, or any part thereof, at the rate of four and one-half per centum; on all taxable income in excess of $15,000.00, at the rate of five and one-half per centum."

The entire Chapter will be found in Appendix I hereto.

Paragraph (a), Section 5033, Mississippi 1930 Code, being Chapter 32, extraordinary session, Mississippi legislature 1928, contains the following language:

"5033. Gross income defined.—For the purposes, except as otherwise provided for non-residents, the term gross income:

"(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind, and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or the use of or any interest in such property, also interest, rent, dividends, securities or other transaction of any business carried on for gain or profit, or gains or profits, and incomes derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer; provided property sold upon what is known as the installment plan when the initial payment is twenty-five per centum or less, the income may be included for taxation in that portion of any installment payment representing gain or profit in the year in which payment is received."

Subdivision (11) of Paragraph (b) of said Section 5033, contains the following language:

> "(11) Income of a domestic corporation, when earned from sources without this state, and such sources shall be defined to mean places of manufacture or production and places of merchandising."

The entire section will be found as part of Appendix I to this statement.

S. B. Lawrence, a citizen and resident of Jackson, in the First Judicial District of Hinds County, Mississippi, in the year 1929, as well as in prior and subsequent years, was engaged in the construction of roads, bridges and highways in the states of Mississippi, Alabama, Louisiana and Tennessee. He made such a profit wholly in the State of Tennessee as that if liable for income tax to the State of Mississippi thereupon, he was indebted to the State of Mississippi for $2250.00. Not having included in his gross income for the year 1929 income earned in the State of Tennessee in the construction of highways therein, the Tax Commissioner of the State of Mississippi under Section 5050 Mississippi 1930 Code which section will be found in the appendix hereto, made an assessment against him therefor.

Under Section 5056, Mississippi 1930 Code, which section will be found in the appendix, he applied to the Tax Commissioner for a revision of the tax assessed against him. The Tax Commissioner, however, confirmed the assessment against the appellant. Whereupon, under Sec-

tion 5057, Mississippi 1930 Code, which will be found in the appendix hereto, he applied to the Mississippi State Tax Commission for a rehearing, R. 2, wherein he specifically set up that the act in question would violate the Fourteenth Amendment to the Constitution of the United States if susceptible to the construction that the appellant was subject to an income tax on earnings contracted for and earned in carrying on an occupation exclusively beyond the limits of the State of Mississippi. R. 4. The action of the Tax Commissioner was affirmed by the Tax Commission. Whereupon, under Section 5057, Mississippi 1930 Code, S. B. Lawrence filed a petition in the Chancery Court of the First Judicial District of Hinds County, Mississippi, requesting a hearing of the case on its merits, accompanied by a bond, approved by the clerk of the court, in a sum double the amount of the controversy, conditioned to pay the judgment of the court.

The petition, R. 11, alleged that in the year 1929, he went into the State of Tennessee, entered into certain contracts for the construction of roads therein, wholly within the State of Tennessee; that no part of the contracts was entered into or performed in the State of Mississippi, but that, upon the other hand, such contracts were entered into and performed wholly within the State of Tennessee, where the appellant collected the contract price thereof. That, for the purpose of entering into said contracts and performing the same, he adopted a situs in the State of Tennessee. He therefore alleged that he was not liable for income contracted for and earned in carrying on an occupation wholly beyond the limits of the State of Mississippi.

The petition alleged that he had appeared before the Tax Commissioner of the State of Mississippi and the Mississippi State Tax Commission and made all objections, and had done such things as are required of him under the statute, and alleged that he had met an adverse ruling at the hands of the Commission.

The appellant, in his said petition for rehearing in the Chancery Court of the First Judicial District of Hinds County, Mississippi, specifically set up that said statute violated the Fourteenth Amendment to the Constitution of the United States, in that the same deprived the appellant of his property without due process of law and denied to him the equal protection of the law. R. 6. At R. 7, the following language is used:

> "Complainant avers that no tax whatever was then and there due, and it was unlawful on the part of the Mississippi State Tax Commission to make said additional assessment against complainant, and it was unlawful on the part of the Mississippi State Tax Commission to deny complainant's petition for a review, but that, on the other hand, said assessment should have been reviewed as prayed for by complainant. That said petition for appeal and review before the entire Commission was filed by the complainant within one year from the date of the notice given to complainant of the assessment of any additional tax.
>
> "Complainant shows unto the court that Section 11, Chapter 132, Mississippi Laws 1924, as amended by Chapter 32, Mississippi Laws, 1928, extraordinary session, violates the Fourteenth Amendment to the Constitution of the United

States in that the same deprives the complainant of his property without due process of law and denies to him the equal protection of the law."

The appellant further alleged that in carrying on in the State of Mississippi and in the surrounding states, including Tennessee, he was engaged in active competition with domestic and foreign corporations, and that under the act complained of, domestic corporations were not required to include in their gross income earned wholly beyond the limits of the state, and that, therefore, said statute violated the Fourteenth Amendment to the Constitution of the United States, in that it discriminated against the appellant, an individual, in favor of domestic and foreign corporations. R. 8.

Again, R. 9, the appellant, in his petition for rehearing, challenged the constitutionality of the act in question as being in violation of the Fourteenth Amendment to the Constitution of the United States, in that the same imposed liability upon him for income earned wholly and exclusively beyond the limits of the state in carrying on an occupation entered into in the State of Tennessee, the language being as follows, R. 9:

"That the legislature of the State of Mississippi is without power and authority to impose and/or collect tax on gains, profits or income derived and earned beyond the limits of the state, and that Section 32, Mississippi legislature, extraordinary session, 1928, violates the Fourteenth Amendment to the Constitution of the United States, in that the same deprives the petitioner of property without due process of law and denies to him the equal protection of the law thereby."

The petition for rehearing, in accordance with the statute, made the proper state officials parties thereto and prayed that a judgment be rendered in accordance with the provisions of the statute, vacating and setting aside the assessment complained of therein. R. 10.

To this petition for rehearing, the Attorney General of the State of Mississippi, for and on behalf of the Mississippi State Tax Commission, filed a demurrer, R. 14.

The matter came on for hearing before the Chancery Court of the First Judicial District of Hinds County, Mississippi. The demurrer filed on behalf of the Mississippi State Tax Commission by the Attorney General of the State of Mississippi was sustained and a final judgment rendered against appellant and the Fidelity & Deposit Company of Maryland, his surety, for the amount of the tax complained of. R. 15.

S. B. Lawrence and the Fidelity & Deposit Company of Maryland prosecuted an appeal to the Supreme Court of the State of Mississippi by giving a bond for the amount and in the form provided by the statute. R. 16.

In the Supreme Court of the State of Mississippi, S. B. Lawrence and the Fidelity & Deposit Company of Maryland, his surety, filed an assignment of error, wherein it was claimed that Chapter 32, Miss. Laws of 1928, extraordinary session, being an amendment to Section 11, Chapter 132, Mississippi Laws of 1924, being Section 5033, Mississippi 1930 Code, as construed and enforced in this case, violated the Fourteenth Amendment to the Constitution of the

United States, in that the same deprived the appellants of their property without due process of law and denied to them the equal protection of the law, R. 17.

The Supreme Court of the State of Mississippi affirmed the action of the Chancery Court of the First Judicial District of Hinds County, Mississippi, and the Supreme Court of the State of Mississippi, in affirming the judgment against appellants, R. 19, used the following language:

> "The Mississippi State Tax Commission, in accordance with the provisions of the Mississippi statutes on the subject, took steps to assess him with the income tax imposed by law. The appellant appeared before the State Tax Commission and objected to the assessment of the said income tax, contending that he is not subject to the income tax upon money earned outside of the State of Mississippi in the contract above referred to; that the state could not, under the 14th section of the Bill of Rights of the State of Mississippi, or the Fourteenth Amendment to the Constitution of the United States, impose liability for income earned as result of performing labor or pursuing an occupation beyond the limits of the state. On the hearing, the Tax Commission assessed him with an income tax on the income earned out of the state. The appellant thereupon filed a bill in chancery in accordance with Section 5057, Code of 1930, to review the assessment. He contended that Chapter 32, extraordinary session, Mississippi legislature 1928 did not impose liability for income earned wholly out of the State of Mississippi; that if the statute should be so construed and enforced as to impose liability upon him for such

income, then the statute would violate the above sections of the Constitution."

Upon the question of discrimination by reason of the fact that domestic corporations were not required to include gross income earned wholly beyond the limits of the state, the court held that such provision itself was stricken down, and that both individuals and domestic corporations were liable for income earned wholly beyond the limits of the state. Accordingly, judgment was rendered against S. B. Lawrence, appellant, the Fidelity & Deposit Company of Maryland, surety on his bond from the State Tax Commission to the Chancery Court of the First Judicial District of Hinds County, Mississippi, and the Maryland Casualty Company, surety on the bond of both of them to the Supreme Court of the State of Mississippi. Both of said sureties join in this appeal as appellants.

E.

ARGUMENT

POINT I.

The statute of the State of Mississippi complained of violated the Fourteenth Amendment to the Constitution of the United States, in that the same deprived appellants of their property without due process of law and denied to them the equal protection of the law, in that the statute, as construed and enforced in this case, imposed liability upon the appellant for an excise, occupation or privilege tax on income contracted for and earned in the following an occupation wholly and exclusively beyond the limits of the State of Mississippi, in the State of Tennessee. Consistent with

the Fourteenth Amendment to the Constitution of the United States, a state may not tax persons, property or an occupation, or the income earned therefrom, beyond the limits of the state.

(a) *The tax imposed upon Lawrence, the appellant, an excise, and not a property tax.*

The Supreme Court of the State of Mississippi has expressly held the tax in question to be an excise tax.

Section 112 of the Constitution of the State of Mississippi, which section is published in full as Appendix II to this brief, provides that taxation shall be uniform and equal throughout the state, and that property shall be taxed in proportion to its value.

In determining the validity of this tax under Section 112 of the Constitution of the State of Mississippi, in order to sustain the same at all, the Supreme Court of the State of Mississippi necessarily had to construe the tax to be other than a property tax. The nature thereof has been presented to the Supreme Court of the State of Mississippi upon two occasions, and has been uniformly designated as an excise tax.

This was so held in *Hattiesburg Grocery Co. v. Robertson, State Revenue Agent,* 126 Miss. 34, 88 So. 4, 25 A. L. R. 748.

And the question was re-examined and affirmed in the case of *State ex rel. Knox v. G. M. & N. R. R. Co.,* 138 Miss. 70, 104 So. 689, wherein the court used the following language:

"The question presented for decision in these cases is the validity vel non of the Income Tax Act, (Chap. 132, Laws of 1924), by which a tax is imposed on all but certain excepted net incomes from whatever source derived. The ground on which it is claimed that the act is void is that it is in conflict with the Fourteenth Amendment to the Federal Constitution and with several sections of the State Constitutions, to which, when necessary, reference will be hereinafter specifically made.

"As to the provision of Section 112 of the State Constitution, that 'property shall be taxed in proportion to its value,' and 'shall be assessed for taxes under general laws, and by uniform rules, according to its true value,' the appellees' contention in this connection is that a tax on income derived from property is a tax on the property from which the income is derived, and, as the tax here imposed is on all income, it was, insofar as it affects income from property, a tax on the property from which the income was derived, which property the Constitution permits to be taxed only in proportion and according to its true value.

"This contention is ruled by *Hattiesburg Grocery Co. v. Robertson*, 126 Miss.. 34, 88, So. 4, 25 A. L. R. 748, wherein this court, after mature consideration, *held that a tax on income is an excise* and is not a tax on the property from which the income may have been derived. As was there pointed out, a tax on income from property includes some of the elements both of a tax on property and of a tax on persons, and cannot be classified as strictly a tax on either alone. Property of itself alone cannot produce income, but must be used or dealt with in some way by a person before gain or income can be derived there-

from, and no definition of income, though derived from property, can be framed which does not include the activities of the person by whom it was produced, received or enjoyed.

"A tax, though not eo nomine on property, but which the owner thereof must pay merely because of his ownership of the property, (*Thompson v. Kreutzer*, 112 Miss. 165, 72 So. 891), or because of a special use of property without reference to whether or not revenue or gain is derived therefrom, (*Thompson v. McLeod*, 112 Miss. 383, 73 So. 193, L. R. A. 1918C, 893, Ann. Cas. 1918A, 674), is a tax on the property, and should be in proportion and according to the value thereof. *But the tax here imposed is not on the ownership or use without gain of property, but is on the revenue which the activities of the owner cause the property to produce. The taxation of such property is universal, and is the basis of most of our privilege taxes.*"

In other words, the tax imposed by the statute, as construed by the Supreme Court of the State of Mississippi, is an excise, occupation or privilege tax on the activities of the owner, which activities of the owner took place wholly and exclusively beyond the limits of the State of Mississippi, in the State of Tennessee, where contracts for the construction of highways were entered into, executed and performed, and the compensation therein collected, and it is this income contracted for and earned in carrying on an occupation wholly beyond the limits of the State of Mississippi, in the State of Tennessee, that is taxed as an excise or occupation tax. Such is the construction placed upon the act by the Supreme Court of the State of Missis-

sippi, which is binding upon this Court. *Bandini Pet. Co. v. Superior Court of the State of California*, October Term, 1931, No. 43, decided November 23, 1931, Advance Sheets, 76 L. Ed. 123; *Lindsey v. Natural Carbonic Acid Gas, Co.*, 220 U. S. 61, 73, 55 L. Ed. 369, 375. Such construction is part of the statute, and is binding on this Court. *Farmers Irrigation Dist. v. Nebraska*, 244 U. S. 325, 61 L. Ed. 1168; *New York ex rel. New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 62 L. Ed. 337; *La Tourette v. McMaster*, 248 U. S. 465, 63 L. Ed. 362; *Vigliotti v. Pa.*, 258 U. S. 403, 66 L. Ed. 686; *Supreme Lodge v. Meyer*, 265 U. S. 30, 68 L. Ed. 885; *Supreme Lodge v. Eiser*, 265 U. S. 41, 68 L. Ed. 891.

The Supreme Court of the State of Mississippi, in construing its own constitution and statutes, held that a tax could not be imposed merely upon the ownership of property, *Thompson v. Kreutzer*, 112 Miss. 383, 73 So. 193, L. R. A. 1918C, 893, Ann. Cas. 1918A, 674.

The tax was not a lieu tax. In the case of *Chicago, R. I. & P. R. R. Co. v. Robertson, Rev. Agent*, 122 Miss. 417, 84 So. 449, the court held that Chapter 113, Miss. Laws of 1912, providing for a fixed charge on the gross receipts of a freight line company in lieu of all taxes on the property of the company used in its business in the state was void as violative of Section 112 of the state constitution. If the income tax complained of had been a property tax, it would have been void under Section 112 of the state constitution aforesaid. See Appendix II. *Thompson v. Kreutzer*, 112 Miss. 165, 72 So. 891; *Thompson v. McLeod*, 112 Miss. 383, 73 So. 193.

Money not subject to taxation in Mississippi. Code, Sec. 3108, Appendix III.

(b) *State of Mississippi without authority to levy an excise tax on income earned beyond the borders of the State.*

The case of *First National Bank of Boston v. Maine*, 284, U. S. ....., Adv. Sheets No. 5, 76 L. Ed. 211, was a case in which a citizen of Massachusetts owned shares of stock in a Maine corporation. Upon the death of the owner of the stock, the same was transmitted by descent or devise in the State of Massachusetts. Since the corporation was domiciled in Maine and transacted most of its business there, the latter state asserted the right to impose a tax upon the transfer thereof. This Court held that the tax was upon the transfer by death, and that such transfer took place in the State of Massachusetts, and could not be taxed in the State of Maine. The Court used the following language:

> "It was by the Frick case, however, that the rule become definitely fixed that, as to tangible personal property, the power to tax is exclusively in the state where the property has an actual situs; and this, as will be seen later, has an important bearing on the present case. Mr. Frick, domiciled in Pennsylvania, died testate owning tangible personal property having an actual situs in New York and Massachusetts. His will was probated in Pennsylvania, and a statute which provided for such a transfer tax was imposed under a Pennsylvania statute which provided for such a tax on all property of a resident decedent, whether within or without the state. Ancillary letters were

granted in New York and Massachusetts. We decided, pp. 488-492, that the Pennsylvania tax, in so far as it was imposed upon the transfer of tangible personalty, having an actual situs in other states, was in contravention of the due process clause of the 14th Amendment. Upon a review of former decisions, it was held (1) that the exaction of a tax beyond the power of the state to impose was a taking of property in violation of the due process clause; (2) that while the tax laws of a state may reach every object which is under its jurisdiction, they can not be given extra-territorial operation; and (3) that as respects tangible personal property, having an actual situs in a particular state, the power to subject it to state taxation rests exclusively in that state, regardless of the owner's domicile.

"The tax there under consideration was not a property tax, but one laid on the transfer of property on the death of the owner, and, as to that, the court said (p.492):"

And, on page 215, the Court also used the following language:

"It long has been settled law that real property can not be taxed, or made the basis of a inheritance tax, except by the state in which it is located. More recently it became settled that the same rule applies with respect to tangible personal property. And it now is established by the three cases last cited that certain specific kinds of intangibles, namely, bonds, notes and credits, are subject to the imposition of an inheritance tax only by the domiciliary state; and this notwithstanding the bonds are registered in another state,

and the notes secured upon lands located in another state, resort to whose laws may be necessary to secure payment.'

And, on page 216, the Court also used the following language:

> "A transfer from the dead to the living of any specific property is an event single in character and is effected under the laws, and occurs within the limits, of a particular state; and if is unreasonable, and incompatible with a sound construction of the due process of law clause of the 14th Amendment, to hold that jurisdiction to tax that event may be distributed among a number of states."

The immunity on the part of the appellant from liability for the imposition of the tax in this case is even clearer than that of the taxpayer under the case above-cited. In the present case, the appellant acquired a domicile, assembled personal property with which to construct highways, and in the State of Tennessee, entered into one or more contracts for the construction of highways, fully performed the same in the State of Tennessee, where settlement was had, where payment was made, no part of which occurred in the State of Mississippi.

In the case last above-cited, the corporation itself was situated in Maine and the actual transfer of stock had to take place in that state. In the present case, nothing took place in the State of Mississippi.

The case of *Hans Rees' Sons, Inc., v. North Carolina*, 283 U. S. 123, 75 L. Ed. 879, is in point. There, the appellant operated a tannery in the State of North Carolina, where it manufactured all of its product. It had a warehouse and sales office in the City of New York, where it was incorporated. It contended that not more than seventeen per cent. of its entire business was done in the State of North Carolina, and offered proof in support thereof. The State of North Carolina contended that since all of its manufacturing was done in that state, the business should be treated as a unit, and allocated eighty-five per cent. of its taxable income to the State of North Carolina, the effect of which was to enable the State of North Carolina to levy an excise tax upon income earned beyond the borders of the state. This Court held that the taxing power of the State of North Carolina was limited by the bounds of the state, using the following language at page 136:

> "For the present purpose, in determining the validity of the statutory method as applied to the appellant, it is not necessary to review the evidence in detail, or to determine as a matter of fact the precise part of the income which should be regarded as attributable to the business conducted in North Carolina. It is sufficient to say that, in any aspect of the evidence, and upon the assumption made by the state court with respect to the facts shown, the statutory method, as applied to the appellant's business for the years in question, operated unreasonably and arbitrarily, in attributing to North Carolina a percentage of income out of all appropriate proportion to the business transacted by the appellant in that state. In this view, the taxes as laid were beyond the

state's authority. *Shaffer v. Carter*, 252 U. S. 37, 52, 53, 57, 64 L. Ed. 445, 456, 457, 40 Sup. Ct. 221."

In the case of *Farmers Loan and Trust Co. v. Minnesota*, 280 U. S. 204, 74 L. ed. 371, a resident of New York owned certain certificates issued by the state of Minnesota. The owner died in New York, and the state of Minnesota asserted the right to impose an excise tax thereupon on the theory that the tax could be imposed at the domicile of the owner or at the domicile of the creditor. The court held otherwise, using the following language:

> "In this court the presently approved doctrine is that no state may tax anything not within her jurisdiction, without violating the 14th Amendment. State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. Ed. 179; *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 50 L. ed. 150, 26 Sup. Ct. Rep. 36, 4 Ann. Cas. 493; *Safe Deposit & T. Co. v. Virginia*, 280 U. S. 83, ante. 180, 50 Sup. Ct. Rep. 59. Also, no state can tax the testamentary transfer of property wholly beyond her power (*Rhode Island Trust Co. v. Doughton*, 270 U. S. 69, 70 L. ed. 475, 43 A. L. R. 1374, 46 Sup. Ct. Rep. 256), or lipose death duties reckoned upon the value of tangibles permanently located outside her limits (*Frick v. Pennsylvania*, 268 U. S. 473, 69 L. ed. 1058, 42 A. L. R. 316, 45 Supt. Ct. Rep. 603). These principles became definitely settled subsequent to *Blackstone v. Miller*, and are out of harmony with the reasoning advanced to support the conclusion there announced."

In the case of *Frick v. Commonwealth*, 268 U. S. 473, 69 L. ed. 1058, a man died in Pennsylvania owning property in Pennsylvania, New York and Massachusetts. Pennsylvania, which has an excise tax, imposing a tax for the transfer of the property wherever it might be situated, even imposed a tax upon tangible property, upon the transfer of property in other states. The court held that this could not be done, using the following language:

> "The plaintiffs in error are the executors and an interested legatee. They contended in the state court, and contend here, that in so far as the Pennsylvania statute attempts to tax the transfer of tangible personal property having an actual situs in states other than Pennsylvania, it transcends the power of that state, and thereby contravenes the due process of law clause of the 14th Amendment to the Constitution of the United States.
>
> "This precise question has not been presented to this court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a state of a tax which it is without power to impose is a taking of property without due process of law, in violation of the 14th Amendment, secondly, that while a state may so shape its tax laws as to reach every object which is under its jurisdiction, it cannot give them any extraterritorial operation; and thirdly, that as respects tangible personal property having an actual situs in a particular state, the power to subject it to state taxation rests exclusively in that state, regardless of the domicile of the owner."

In the case of *Safe Deposit Trust Co. v. Virginia*, 280 U. S. 83, 74 L. ed. 180, certain intangible property was placed in the hands of trustees beyond the limits of the state of Virginia. The state of Virginia sought to levy an excise tax upon the transfer thereof by death. This court held that since the beneficiary could not change the status of the property and the donor had not exercised the right of revocation during his lifetime, that the property was not subject to an income tax in the state of Virginia, using the following language:

> "Here we must decide whether intangibles—stocks, bonds—in the hands of the holder of the legal title with definite taxable situs at its residence, not subject to change by the equitable owner, may be taxed at the latter's domicile in another state. We think not. The reasons which led this court in *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 50 L. ed. 150, 26 Sup. Ct. Rep. 36, 4 Ann. Cas. 493, and *Frick v. Pennsylvania*, supra, to deny application of the maxim mobilia sequuntur personam to intangibles apply to the intangibles in appellant's possession. They have acquired a situs separate from that of the beneficial owners. The adoption of a contrary rule would 'involve possibilities of an extremely serious character' by permitting double taxation, both unjust and oppressive. And the fiction of mobilia sequuntur personam 'was intended for convenience, and not to be controlling where justice does not demand it'."

We do not contend that the contract to build the highway in the state of Tennessee was an intangible one. Upon the other hand the status was more nearly akin to the status

of real or tangible property. The activities of the owner from which the revenue was derived took place exclusively in the state of Tennessee, and the operations, that is to say the building of the highway, were had with the material and equipment, personal property of a tangible nature, exclusively situated in the state of Tennessee. That the state of Mississippi could impose an excise tax neither upon the income from the property nor the activities of the owner in utilizing the same for the construction of highways in the state of Tennessee.

The case of *St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S. 346, 67 L. ed. 297, presented the case where a Missouri corporation operated a cotton compress in the state of Arkansas. The statutes of the latter named stated required that all property situated in the state be insured in companies authorized to do business in the state, and imposed a tax of 5 per cent on the premiums paid if any company who insures its property in a company or companies not admitted to do business in the state. The appellant entered into a contract in the state of Missouri with an insurance company to insure its property. The state of Arkansas brought suit against the appellant for the premium tax. This court held that the contract of insurance was made entirely out of the state of Missouri and that no liability could be imposed therefor by the state of Arkansas, using the following language:

> "The name given by the state to the imposition is not conclusive. *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 66 L. ed. 817, 21 A. L. R. 1432, 42 Sup. Ct. Rep. 449; *Lipke v. Lederer*, 259 U. S. 557, 66 L. ed. 1061, 42 Sup. Ct. Rep. 549. In Louisiana

the detriment was $1,000. Here it is 5 per cent upon the premiums,—which is 3 per cent more than is charged for insuring in authorized companies. Each is a prohibition to the extent of the payment required. The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the state. This case is stronger than that of Allgeyer in that here no act was done within the state, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside. The other limit upon the state's power, due to its having permitted the plaintiff in error to establish itself as alleged, need not be considered here."

In the case of *Shaffer v. Carter*, 252 U. S. 37, 64 L. ed. 445, a resident of the state of Illinois engaged in the business of drilling for oil in the state of Oklahoma, the latter state imposed an excise tax upon the income arising therefrom. The petitioner contended that since he was a citizen and resident of Illinois his, a personal occupation although carried on in Oklahoma could not be taxed there. This court in that case took occasion to express the correct rule in respect to the taxing powers of states, using the following language:

"The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this court. In *M'Culloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579, while denying their power to impose a tax upon any of the operations

of the Federal government, Mr. Chief Justice Marshal, speaking for the court, conceded (pp. 428, 429) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction, saying: 'It is obvious that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends are objects of taxation,' etc. In *Michigan C. R. Co. v. Powers*, 201 U. S. 245, 50 L. ed. 744, 26 Sup. Ct. Rep. 459, the court by Mr. Justice Brewer, said (pp. 292, 293): 'We have had frequent occasion to consider questions of state taxation in the light of the Federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects and methods.' That a state may tax callings and occupations as well as persons and property has long been recognized. 'The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. . . . It (taxation) may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.' State Tax on Foreign Bonds, 15 Wall. 300, 319, 21 L. ed.

179, 186. See also *Welton v. Missouri*, 91 U. S. 275, 278, 23 L. ed. 347, 348; *Armour & Co. v. Virginia*, 246 U. S. 1, 6, 62 L. ed. 547, 550, 38 Sup. Ct. Rep. 267; *American Mfg. Co. v. St. Louis*, 250 U. S. 459, 463, 63 L. ed. 1084, 1087, 39 Sup. Ct. Rep. 522."

According to the rule anounced in the foregoing, a state may tax property situated within its borders, or income earned therein. The occupation, however, out of which the income arises as well as the tangible property taxed must be within the jurisdiction of the state.

In the case of *New York Life Insurance Co. v. Dodge*, 246 U. S. 257, 62 L. ed. 772, a citizen of Missouri took out a life insurance policy in that state from the appellant, the New York Life Insurance Company. A local statute provided that after three annual premiums had been paid on a life insurance policy that the same should not become forfeited for the non-payment of premiums, that three-fourths of the net value of the policy should be applied to paying premium notes, the remaining one-fourth applied to purchasing temporary insurance. The assured went to the state of New York and hypothecated the policy for a cash loan. The loan was not paid and the interest of the assured was foreclosed according to the terms of the loan agreement. After the death of the assured suit was brought on the policy in Missouri, and the Missouri statute above referred to was invoked to prevent a forfeiture of the policy. This court held that the statute violated the 14th Amendment to the Constitution of the United States, in that extra-territorial effect was given thereto. The

court reaffirmed its opinion in *New York Life Insurance Co. v. Head*, 234 U. S. 149, 58 L. ed. 1259:

> "'It would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that state and in the state of New York, and there destroy freedom of contract without throwing down the constitutional barriers by which all the states are restricted within the orbits of their lawful authority and upon the preservation of which the government, under the Constitution depends.' The reasoning advanced by the Missouri supreme court to support its ruling was thus summarized: 'As foreign insurance companies have no right to come into the state and there do business except as the result of a license from the state, and as the state exacts as a condition of a license that all foreign insurance companies shall be subject to the laws of the state as if they were domestic corporations, it follows that the limitations of the state law resting upon domestic corporations also rest upon foreign companies, and therefore deprive them of any power which a domestic company could not enjoy, thus rendering void or inoperative any provision of their charter or condition in policies issued by them or contracts made by them inconsistent with the Missouri law.' And this argument we declared unsound since the 'proposition cannot be maintained without holding that because a state has power to license a foreign insurance company to 'do business within its borders and the authority to regulate such business, therefore a state has power to regulate the business of such company outside its borders and which would otherwise be beyond the state's authority,—a distinction which brings the contention right back to the primordial

conception upon which alone it would be possible to sanction the doctrine contended for; that is, that because a state has power to regulate its domestic concerns, therefore it has the right to control the domestic concerns of other states.'"

In the case of *Provident Savings Life Assurance Society v. Commonwealth of Kentucky*, 239 U. S. 103, 60 L. ed. 167, the appellant for seven years was engaged in writing policies of life insurance in the state of Kentucky, wherein there was imposed by statute a tax on premiums collected by the company on such policies written in the state. Subsequently, the company retired and ceased to do further business in the state. It permitted, however, its outstanding policies to remain in force and premiums were remitted by the assureds in such policies to the company's general office out of the state. The state of Kentucky asserted the right to collect a premium tax therefor. This court held that what the company did was not by consent of the state, that it did nothing within the state, and, therefore, consistent with the 14th Amendment to the Constitution of the United States liability could not be imposed merely because the company saw fit to leave its policies of insurance in force and receive the premium outside the state. The court used the following language:

"It had sought to withdraw itself completely from the state. The conclusion that it continued to do business within the state, notwithstanding this withdrawal, appears to be based solely upon the fact that it continued to be bound to the policy holders resident in Kentucky under policies previously issued in that state, and that it received the renewal premiums upon these poli-

cies. As the policies remained in force, it is said that the company continued to furnish protection to citizens of Kentucky. The renewal premiums, as already stated, were paid in New York. There is, however, a manifest difficulty in holding that the mere continuance of the obligation of the policies constituted the transaction of a local business for which a privilege tax could be exacted. As a privilege tax, the tax rests upon the assumption that what is done depends upon the state's consent. But the continuance of the contracts of insurance already written by the company was not dependent on the consent of the state. It is true that acts might be done within the state in connection with such policies (as, for example, in maintaining an office or agents, although new insurance was not written or solicited) which could be considered to amount to the continuance of a local business. In such case it would be the actual transaction of business that would furnish the ground of the license exaction, and not the mere existence of the obligation under policies previously written. These policies are contracts already made; the state cannot destroy them or make their mere continuance, independent of acts within its limits, a privilege to be granted or withheld. Neither the continuance of the obligation in itself, nor acts done elsewhere on account of it, can be regarded as being within the state's control. *Allgeyer v. Louisianas*, 165 U. S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427; *Bedford v. Eastern Bldg. & L. Asso.* 181 U. S. 227, 241, 45 L. ed. 834, 844, 21 Sup. Ct. Rep. 597; *New York L. Ins. Co. v. Head*, 234 U. S. 149, 163, 58 L. ed. 1259, 1265, 34 Sup. Ct. Rep. 879."

In the case of *Western Union Telegraph Co. v. Kansas*, 54 L. ed. 355, 216 U. S. 1, as a condition precedent to the right of the telegraph company to do business in the state of Kansas, a tax was imposed upon the entire authorized capital stock of the company which represented large holdings of property beyond the limits of the state. This court held that the act violated both the commerce clause and the due process clause of the Constitution of the United States, using the following language:

> "The state court ought to have refused the affirmative relief asked, and dismissed the petition upon the ground that the condition sought to be enforced by a decree of ouster was in violation of the commerce and due-process clauses of the Constitution and of the company's rights under that instrument. The right of the telegraph company to continue the transaction of local business in Kansas could not be made to depend upon its submission to a condition prescribed by that state, which was hostile both to the letter and spirit of the Constitution. The company was not bound, under any circumstances, to surrender its constitutional exemption from state taxation, direct or indirect, in respect of its interstate business and its property outside of the state, any more than it would have been bound to surrender any other right secured by the national Constitution."

In the case of *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 50 L. ed. 150, the statute of Kentucky contained the following language:

> "Section 4020 of the Kentucky statutes, under which this assessment was made, provides that

'all real and personal estate within this state, and all personal estate of persons residing in this state, and of all corporations organized under the laws of this state, whether the property be in or out of this state, . . . shall be subject to taxation, unless the same be exempt from taxation by the Constitution, and shall be assessed at its fair cash value, estimated at the price it would bring at a fair voluntary sale'."

The state attempted to tax the personal property of the corporation situated beyond the limits of the state. This court took occasion carefully to define the taxing power of the state, using the following language:

"The power of taxation, indispensable to the existence of every civilized government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property, or in the creation and maintenance of public conveniences in which he shares,—such, for instance, as roads, bridges, sidewalks, pavements, and schools for the education of his children. If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another state, to which it may be said to owe an allegiance, and to which it looks for protection, the taxation of such property within the domicil of the owner partakes rather of the nature of an extortion than a tax, and has been repeatedly held by this court to be beyond the power of the legislature, and a taking of property without due process of law. *Northern C. R. Co. v. Jackson*, 7 Wall. 262, 19 L. ed. 88; State Tax on Foreign-held Bonds, 15 Wall. 300, 21

L. ed. 179; *Tappan v. Merchants' Nat. Bank*, 19 Wall. 490-499, 22 L. ed. 189-193; *Delaware, L. & W. R. Co. v. Pennsylvania*, 198 U. S. 341, 358, 49 L. ed. 1077, 1083, 25 Sup. Ct. Rep. 669. In *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 41 L. ed. 979, 17 Sup. Ct. Rep. 581, it was held, after full consideration, that the taking of private property without compensation was a denial of due process within the 14th Amendment. See also *Davidson v. New Orleans*, 96 U. S. 97, 102, 24 L. ed. 616, 618; *Missouri P. R. Co. v. Nebraska*, 164 U. S. 403, 417, 41 L. ed. 489, 495, 17 Sup. Ct. Rep. 130; *Mt. Hope Cemetery v. Boston*, 158 Mass. 509, 519, 35 Am. St. Rep. 515, 33 N. E. 695."

In the case of *D. L. & W. Railroad Co. v. Pennsylvania*, 198 U. S. 341, 49 L. ed. 1077, this court held that the enforcement of a statute of the state of Pennsylvania against the appellant which required that the appraisement of the capital stock of a domestic corporation, the value of coal mined by it within the state then situated in other states there awaiting sale when the appraisement was made violated the 14th Amendment to the Constitution of the United States.

In the case of *Louisville & Jeffersonville Ferry Co. v. Kentucky*, 188 U. S. 385, 47 L. ed. 513, the state of Kentucky imposed liability upon the appellant for taxation purposes of a franchise owned and exercised by it in the state of Indiana. This court held that the franchise was situated in the state of Indiana was in the nature of incorporeal hereditaments, enjoyed the protection of the laws of the state of Indiana and not that of Kentucky, and held that

the statute of the state of Kentucky justifying the liability violated the 14th Amendment to the Constitution of the United States, using the following language:

> "This view if not met by the suggestion that Kentucky can make it a condition of the exercise of corporate powers under its authority that the tax upon the franchise granted by it shall be measured by the value of all its property, wherever situated, of whatever nature, or from whatever source derived. It is a sufficient answer to this suggestion to say that no such condition was prescribed in the charter of the ferry company when it was granted and accepted. Nor does the taxing statute in question make it a condition of the ferry company's continuing to exercise its corporate powers that it shall pay a tax for its property having a situs in another state. There is no suggestion in the company's charter that the state would ever, in any form, tax its property having a situs in another state. We express the opinion as to the validity of such a condition if it had been inserted in the company's charter, or if it were now, in terms, prescribed by any statute. We decided nothing more than it is not competent for Kentucky, under the charter granted by it, and under the Constitution of the United States, to tax the franchise which its corporation, the ferry company, lawfully acquired from Indiana, and which franchise or incorporeal hereditament has its situs, for purposes of taxation, in Indiana."

In the case of *Allgeyer v. State of Louisiana*, 165 U. S. 517, 41 L. ed. 832, a citizen of the state of Louisiana through the medium of the United States mail made a contract in the state of New York for fire insurance covering certain

property in the state of Louisiana. The state of Louisiana had a statute imposing a fine of $1,000.00 for effecting fire insurance on property in Louisiana outside of the state. The appellant made three such contracts, and suit was brought for $3,000.00. This court held the act unconstitutional as violating the 14th Amendment to the Constitution of the United States, using the following language:

> "Has a citizen of a state, under the provisions of the Federal Constitution above mentioned, a right to contract outside of the state for insurance on his property—a right of which state legislation cannot deprive him?" We are not alluding to acts done within the state by an insurance company or its agents doing business therein, which are in violation of the state statutes. Such acts come within the principle of *Hooper v. California*, 155 U. S. 648, and would be controlled by it. When we speak of the liberty to contract for insurance or to do an act to effectuate such a contract already existing, we refer to and have in mind the facts of this case, where the contract was made outside the state, and as such was a valid and proper contract. The act done within the limits of the state under the circumstances of this case and for the purpose therein mentioned, we hold a proper act, one which the defendants were at liberty to perform and which the state legislature had no right to prevent, at least with reference to the Federal Constitution. To deprive the citizen of such a right as herein described without due process of law is illegal. Such a statute as this in question is not due process of law, because it prohibits an act which under the Federal Constitution the defendants had a right to perform. This does not interfere in any way with the acknowledged

> right of the state to enact such legislation in the legitimate exercise of its police or other powers as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the Federal Constitution."

In the case of *Cleveland, etc. R. R. Co. v. Pennsylvania*, 15 Wall. 300, 21 L. ed. 179, which was a case where the appellant railroad company issued bonds secured by a mortgage on its property portions of which were in the state of Pennsylvania; the bonds were made payable in New York City, but many of them were sold to persons out of the state of Pennsylvania. The statute of the latter mentioned state required the treasurer of the railroad company to withhold 5 per cent of all interest paid on bonds for the benefit of the state; the purpose of the holding was in the nature of a tax imposed. The railroad company resisted the collection of the tax on the ground that the bonds belonged to persons out of the state, and that neither the bonds nor the income derived therefrom were situated in Pennsylvania, and were not subject to its taxing power. This court held that as to the bonds owned by persons living out of the state the tax was non-taxable, using the following language:

> "We are clear that the tax cannot be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State. Even where the bonds are held by residents of the State the retention by the Company of a portion of the stipulated interest can only be sustained as a mode of collecting a tax

upon that species of property in the State. When the property is out of the State there can then be no tax upon it for which the interest can be retained. The tax laws of Pennsylvania can have no extraterritorial operation; nor can any law of that State, inconsistent with the terms of a contract, made with or payable to parties out of the State, have any effect upon the contract whilst it is in the hands of such parties or other non-residents. The extraterritorial invalidity of state laws discharging a debtor from his contracts with citizens of other States, even though made and payable in the State after the passage of such laws, has been judicially determined by this court. *Ogden v. Saunders,* 12 Wheat. 214; *Baldwin v. Hale,* 1 Wall. 223 (68 U. S., XVII, 531). A like invalidity must, on simple grounds, attend state legislation which seeks to change the obligation of such contracts in any particular, and on stronger grounds where the contracts are made and payable out of the State."

In the case of *Arpin v. Eberhardt,* (Wis.) 147 N. W. 1016, the supreme court of Wisconsin held that its own statute imposing an excise tax upon earnings should be limited to those earned within the borders of the state other than incomes from intangibles, using the following language:

"Certain considerations occur to us which might have induced the Legislature to refrain from taking income derived from sources without the state, except as specified. It was no doubt the desire of the Legislature to prevent the loan or investment of moneys without the state for the purpose of receiving a fixed return for the investment made, so as to avoid the payment of a tax

on this species of property. The property of this firm was taxable in the state where located. If incomes were taxed in that state, the income would also in all probability be taxed there. If the income were taxed here; it might be doubly taxed. Conceding the right to impose such double taxation, the Legislature might well feel that it would not be just to do so. Other considerations might be mentioned, but those suggested should suffice."

It is our contention that the construction had by the supreme court of Wisconsin upon its statutes was one required in order that the same might not offend the 14th Amendment of the Constitution of the United States. The legislature of the state of Wisconsin was doubtless of the opinion that it could not under the 14th Amendment levy an excise tax upon income earned exclusively out of the state except as to intangibles, and the supreme court of Wisconsin doubtless attributes such intention in adopting the construction which it gave to the act. So appellant contends in this case that if he had owned any intangibles beyond the limits of the state of Mississippi, such as bonds, stocks, notes, etc., that such intangibles would follow his domicile and the income therefrom would be subject to taxation in Mississippi, but that the making and performing a contract for the construction of highways in the state of Tennessee which required the assembling of the necessary equipment, the construction of the highways wholly within the state of Tennessee was not an intangible, but was income derived solely from exercising an occupation wholly within the state of Tennessee. That state of Mississippi could not have authorized the doing of the things which were done and could not have prohibited the same. The

tax payer owed allegiance while in Tennessee in performance of the contract to the state of Tennessee, and received no kind of protection or assistance from the state of Mississippi.

(c) *SINCE AN OCCUPATION CARRIED ON WHOLLY BEYOND THE LIMITS OF THE STATE MAY NOT BE TAXED AT THE SOURCE, THE INCOME ARISING THEREFROM IS NOT, CONSISTENT WITH THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, SUBJECT TO TAXATION.*

In the case of *National Life Insurance Co. v. United States*, 277 U. S. 508, 72 L. ed. 968, the court had before it for review the Act of Congress imposing a tax upon life insurance companies. The company was allowed an exemption from such taxation equal to 4 per cent of the company's legal reserve. In calculating a 4 per cent, however, the United States required the tax payer to include interest received from state obligations. This court held that since the securities themselves were not subject to taxation income arising therefrom could not be taxed, using the following language:

> "*Miller v. Milwaukee*, 272 U. S. 713, 71 L. ed. 487, 47 Sup. Ct. Rep. 280.
>
> "Held: That 'where income from bonds of the United States which by act of Congress is exempt from state taxation is reached purposely, in the case of corporation-owned bonds, by exempting the income therefrom in the hands of the corporation, and taxing only so much of the stockholders' dividends as corresponds to the corporate income not assessed, the tax is invalid.'

"It is settled doctrine that directly to tax the income from securities amounts to taxation of the securities themselves. *Northwestern Mut. L. Ins. Co. v. Wisconsin*, 275 U. S. 136, ante, 202, 48 Sup. Ct. Rep. 55. Also, that the United States may not tax state or municipal obligations. *Metcalf v. Mitchell*, 269 U. S. 514, 70 L. ed. 384, 391, 49 Sup. Rep. 172."

In the case of *Gillespie v. Oklahoma*, 256 U. S. 501, 66 L. ed. 338, there was an attempt by the state of Oklahoma to assess the appellant with income as a lessee of Indian lands. The court held that the lease could not be taxed since the same was an instrumentality of the United States government, and therefore never could the income arising therefrom be taxed, using the following language:

"Whether this property could be taxed in any other form or not it cannot be reached as profits or income from leases such as those before us. The same considerations that invalidate a tax upon the leases invalidate a tax upon the profits of the leases; and, stopping short of theoretical possibilities, a tax upon such profits is a direct hamper upon the effort of the United States to make the best terms that it can for its wards."

In the case of *Indian Territory Illiminating Oil Co. v. Oklahoma*, 240 U. S. 522, 60 L. ed. 779, it was held that the state could not assess to a corporation an oil and gas lease of Indian lands, and that in assessing the capital stock of the corporation the value of the lease should not be included.

Upon the question now under discussion touching the right of the state to impose an excise tax upon one of its

citizens for income earned in carrying on an occupation beyond the limits of the state contented itself by making reference to the case of *State, Ex Rel Knox, Attorney General v. G. M. & N. Railroad Co.* 138 Miss. 70, 104 So. 689, supra. In the case the court cited as justifying its position *Shaffer v. Carter*, 252 U. S. 37, 64 L. ed. 445. The anouncement contained in that case, however, does not support the conclusion reached by the supreme court of the state of Mississippi in respect to its authority to levy an excise tax upon income for an occupation earned beyond the limits of the state. As a matter of fact, the case holds just the contrary as will appear from the discussion of the case contained herein. The supreme court of the state of Mississippi likewise referred to the case of *Maguire v. Trefry*, 253 U. S. 12, 64 L. ed. 738.

In that case, the appellant was a risident of Boston, Mass. She was the beneficiary of a trust estate consisting of intangibles in the hands of a trustee in the State of Pennsylvania, from which trust estate she acquired certain income. There are two differences between that case and the one before the court. In that case, the securities were intangibles, and the doctrine of mobilia sequuntur personam applied. In other words, the situs of the intangibles followed the domicile of the beneficiary, which was in Massachusetts. The second difference is that the tax was not an excise tax, but a property tax according to the laws of the State of Massachusetts. *Tax Commission v. Putnam*, 227 Mass. 522, L. R. A. 1917F, 806, 116 N. E. 804.

This court has recently had occasion to limit the application of the case in *Safe Deposit & Trust Co. v. Virginia*,

280 U. S. 83, 74 L. ed. 180, in respect to which the following language was used by this court:

> "The power of Virginia to lay a tax upon the fair value of any interest in the securities actually owned by one of her resident citizens is not now presented for consideration. See *Maguire v. Trefrey*, supre."

That is to say, the tax imposed by the state of Massachusetts was intended as the equivalent of a property tax upon the fair value of any interest which the appellant had in the securities measured by the income arising therefrom. Suppose, however, that the appellant, though living in Massachusetts, had each day gone into Pennsylvania and followed some occupation, such as a day laborer, clerking in a store or selling goods. It could not be contended that an excise, privilege or occupation tax could have been imposed upon her for performing manual labor in another state. And the case of *Maguire v. Trefrey*, supra, is not an authority for such position. As a matter of fact, we have the converse of the proposition in the supreme court of the state of Massachusetts in the case of *Hutchins et al v. Commissioner of Taxation*, 172 N. E. 605. In that case, a trust estate was situated in the state of New York. The trustees, however, resided in the state of Massachusetts. The supreme court of Massachusetts held that the income was not subject to taxation, using the following language:

> "In our opinion, it follows that there was no jurisdiction to levy the taxes on the gains of the two New York trusts. For discussion of cognate questions, see *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S. 194, 202, 26 Sup. Ct. Rep. 36,

50 L. Ed. 150, 4 Ann. Cas. 493, *Frick vs. Pennsylvania*, 268 U. S. 373, 288, 489, 45 Sup. Ct. Rep. 603, 69 L. Ed. 1058, 42 A. L. R. 316; *Rhode Island Hospital Trust Co. vs. Doughton*, 270 U. S. 69, 46 Sup. Ct. Rep. 256, 70 L. Ed. 475, 43 A. L. R. 1347; *Blodgett vs. Silberman*, 277 U. S. 1, 12, 18, 48 Sup. Ct. Rep. 410, 72 L. Ed. 749; *Brooke vs. Norfolk*, 277 U. S. 27, 29, 48 Sup. Ct. Rep. 422, 72 L. E. 767."

The supreme court of New Hampshire in the case of Opinion of the Justices, 149 Atl. 321, announced the following rule:

"The provision for the taxation of rents can not be applied to rent paid for the use of real property situated outside the state, although the rent is received by a resident. It has always been the accepted rule that a state can not lay a tax upon realty not within its jurisdiction. *Winnipiseogee, etc., Co. v. Gilford*, 64 N. H. 337, 349, 10 A. 849. The same principle applies to tangible personal property. *Union, etc., Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36, 50 L. Ed. 150, 4 Ann. Cas. 493; *Frick v. Pa.*, 268 U. S. 473, 45 S. Ct. 603, 69 L. Ed. 1058, 42 A. L. R. 316; *Winkley v. Newton*, 67 N. H. 80, 36 A. 610, 35 L. R. A. 756.

"In *Pollock v. Farmers Loan & League Trust Co.*, 157 U. S. 429, 15 S. Ct. 673, 39 L. Ed. 759, Id., 158 U. S. 601, 15 S. Ct. 912, 39 L. Ed. 1108, it was held upon great consideration that a tax laid upon rent is a direct tax upon the land out of which the rent issues. Opinion of the Justices, 77 N. H. 611, 615, 626, 93 A. 311.

"While the question whether a state could tax rent received for the use of realty over which the

state had no jurisdiction was expressly excluded from consideration in *Union, etc., Co. v. Kentucky*, supra, the logic of the later decisions points plainly to the conclusion that such a tax would be in violation of the provisions federal constitution. *Nat. Life Ins. Co. v. U. S.* 277 U. S. 508, 48 S. Ct. 591, 72 L. Ed. 968; *Gillespie v. Oklahoma*, 257 U. S. 501, 42 S. Ct. 171, 66 L. Ed. 338.

"We are of the opinion that a state can not tax income received as compensation for the use of either real estate or tangible personal property which has a situs outside the state. To avoid a misapprehension, we add that this limitation does not apply to the taxation of intangibles owned by residents. *Hawley v. Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, Ann. Cas. 1916C 842."

(d) *THE INCOME EARNED AND THE PROPERTY WITH WHICH THE SAME WAS EARNED SUBJECT TO TAXATION IN TENNESSEE.*

The 1927 Acts of the Tennessee legislature imposed the following taxes upon highway contractors:

"CONTRACTORS.

Each person, firm or corporation engaged in the business of constructing railroads and public roads in this State if the original contractors, shall pay per annum $250.00

Each person, firm or corporation engaged in the business of constructing railroads and public roads in this State as sub-contractors, shall pay per annum $150.00

Provided, that the term 'Contractor' shall apply only to those contractors employing one or more persons and not to any individual who undertakes to alone do the work of his contract.

"CONSTRUCTION COMPANIES.

Each person, form or corporation, foreign or domestic, operating or doing business in this State, directly or by agent, engaged in the general contracting business of constructing office buildings, public buildings or other buildings, bridges, water works, drainage works, sewerage systems, and the like, other than public roads or railroad contractors, where the aggregate contract price contracted for construction in any one year exceeds the sum of $500.00, per annum $200.00

For the construction of bridges the contractor is thus subject to an additional tax of $200.00."

The appellant was under the protection of the laws of the state of Tennessee as was the property engaged therein while carrying on the occupation out of which the income arose.

In addition to the foregoing privilege tax on contracts under Section 28 of the State Constitution of the State of Tennessee, the tangible property had by the appellant in the State of Tennessee was subject to taxation.

We file herewith as Appendix IV of this brief copy of said section of the State of Tennessee.

Since the appellant carried on an operation in the State of Tennessee, he was not only subject to the privilege or occupation tax hereinbefore set out, and not only liable for tax on any tangible property, but subject to any income tax which the State of Tennessee might impose. In the mean time, the State of Tennessee has imposed a tax on income. A copy of said act is not available to the appellant at the writing of this brief, but will be made Appendix I to appellant's reply brief.

In the State of Mississippi the appellant was subject to ad valorem tax on all tangible property owned by him in the state. See Section 112 of the Mississippi Constitution in the appendix. He was subject to an excise tax on all income earned within the state; and since the first day of June 1930, has been subject to an occupation tax as a contractor under Section 54 Mississippi Laws of 1930, memorandum of which is hereto annexed as Appendix V.

We submit that the appellant should only be required to *"render unto Caesar the things which are Caesar's,"* and this he does when he pays a property tax on all tangible property in the state and for occupations engaged in within the state. He owed allegiance to the State of Tennessee and was liable to it for building highways in the State of Tennessee and the property therein engaged was subject to taxation and taxed within that jurisdiction.

POINT II.

No liability is imposed upon domestic corporations engaged in competition with appellant in the construction of highways in Mississippi or adjoining states, including Tennessee, under similar circumstances.

No liability has been attempted to be imposed by the taxing authorities upon domestic corporations. Therefore, the act violates the Fourteenth Amendment to the Constitution of the United States in the particulars hereinbefore mentioned. Paragraph 11 of the act complained contains the following language:

> "(11) Income of a domestic corporation, when earned from sources without this state, and such sources shall be defined to mean places of manufacture or production and places of merchandising."

The petition for review in this case set out that the appellant Lawrence, during the year 1929, was engaged in competition with domestic and foreign corporations in constructing highways in Mississippi and in Tennessee under the identical circumstances. Not only is it true that the act imposed no liability upon such corporations, but the taxing authorities of the State of Mississippi have customarily, intentionally and uniformly relieved domestic corporations from all liability for income earned out of the state.

In *Quaker City Cab Co., v. Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927, the legislature of the State of Pennsylvania imposed an excise tax on the gross receipts of corporations operating taxicabs. It appeared from the facts that corporations operating taxicabs were in direct competition with individuals and partnerships engaged in the same business. This court held that the act violated the Fourteenth Amendment to the Constitution of the United States, using the following language:

"Plaintiff in error was subject to competition in its business by individuals and partnerships operating taxicabs. The act does not apply to them, and no tax is imposed on their receipts. Corporations operating taxicabs are not exempted from any of the taxes imposed on natural persons carrying on that business. And every such corporation, whether domestic or foreign, pays a capital stock tax of five mills on the actual value of its capital stock and a bonus of one-third of one per cent pe the par value of all stock issued if it be a domestic corporation, and a like rate on its capital employed in Pennsylvania if it be a foreign corporation. Act of July 22, 1913, P. L. 903, Sec. 1, Act of May 3, 1889, P. L. 903, Art. 1, Act of May 8, 1901, P. L. 159. The supreme court said that it is immaterial whether individuals engaged in a like taxicab business are subject to the tax here involved and that corporations may be placed in a class separate from individuals and so taxed.

"The equal protection clause extends to foreign corporations within the jurisdiction of the state and safeguards to them protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. *Kentucky Finance Corp. v. Paramount Auto Exch. Corp.*, 262 U. S. 544, 550, 67 L. Ed. 1112, 1115, 43 Sup. Ct. Rep. 636. The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to difference in situation or forbid classification in that connection, but it does require that the classification be not arbitrary but based

on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' *Power Mfg. Co. v. Saunders*, 274 U. S. 490, 493, 71 L. Ed. 1165, 1167, 47 Sup. Ct. Rep. 678."

The following authorities are directly in point: *W. A. Frost v. Corporation Commission*, 278 U. S. 515, 73 L. Ed. 483; *Southern Railway Co. v. Green*, 216 U. S. 400, 54 L. Ed. 536; *Royster Guano Co. v. Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Chalker v. Railway Co.*, 249 U. S. 522, 63 L. Ed. 748.

The Supreme Court of the State of Mississippi in the case recognized the unjustifiable discrimination, but sought to obviate the same by striking out Paragraph 11 above quoted, which, as construed, imposed liability for income earned both within and without the state on domestic corporations as well as individuals. However, this record discloses that no liability was attempted to be enforced against domestic corporations during the year 1929, and the Supreme Court of the State of Mississippi is without power or authority to remove the discrimination and require the State Tax Commission to proceed against domestic corporations. The appellant likewise is under no such duty.

In the recent case of *Iowa-Des Moines Nat'l Bank v. E. R. Bennett, Chairman*, Nos. 15 and 16, docket of this Court, October 1931, opinion by Mr. Justice Brandeis, December 14, 1931, the following language was used:

"The petitioners' rights were violated, and the causes of action arose, when taxes at the lower rate were collected from their competitors. It may

be assumed that all ground for a claim for refund would have fallen if the State, promptly upon discovery of the discrimination, had removed it by collecting the additional taxes from the favored competitors. By such collection the petitioners' grievances would have been redressed; for these are not primarily overassessment. The right invoked is that to equal treatment; and such treatment will be attained if either their competitors' taxes are increased or their own reduced. But it is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of Federal law, can not be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. *Cumberland Coal Co. v. Board of Revision*, supra; *Green v. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 514-518; *Chicago Great Western Railway Co. v. Kendall*, 266 U. S. 94, 98; *Sioux City Bridge Co. v. Dakota County*, supra. Nor may he be remitted to the necessity of awaiting such action by the state officials upon their own initiative. *Montana Nat'l Bank v. Yellowstone County*, supra."

We respectfully submit that the objection is not removed.

We respectfully submit that the judgment appealed from was erroneous for the reasons hereinbefore set out and should be reversed.

Respectfully submitted,

WILLIAM H. WATKINS,
R. W. HEIDELBERG,
Attorneys for Appellants.

APPENDIX I.

Chapter 124, Vol. 2, Mississippi Code 1930 Annotated

5027. IMPOSITION OF THE TAX.—There is hereby assessed and levied to be collected and paid as hereinafter provided for the calendar year 1930 and for each calendar year thereafter upon the entire net income of every resident individual, corporation, association, trust or estate, in excess of the credits provided, a tax at the following rates: On the first $2,000.00 of taxable income, or any part thereof, at the rate of two and one-half per centum; on the next $3,000.00 of taxable income, or any part thereof, at the rate of three and one-half per centum; on the next $10,000.00, or any part thereof, at the rate of four and one-half per centum; on all taxable income in excess of $15,000.00, at the rate of five and one-half per centum.

(2) A like tax is hereby imposed to be assessed, collected and paid annually at the rates specified in this section and as hereinafter provided upon and with respect to the entire net income, from all property owned and from every business, trade or occupation carried on in this state by individuals, corporations partnerships, trusts or estates, not residents of the state of Mississippi.

(3) In the case of taxpayers subject to this tax having a fiscal year ending in 1930, the tax shall be determined by:

(2) Computing for a full year the amount of tax due, and considering the exemptions and credits allowed hereunder.

(b) By computing the amount of tax due for a full year, after considering the credit and exemptions allowed herein.

(c) The same ratio of the tax determined under (a) of this paragraph which the number of months in 1929 bear to the total number of months in the fiscal period;

(d) The same ratio of the tax computed under (b) of this paragraph which the number of months in 1930 bear to the number of months in the fiscal period;

(e) The amount of tax due for the fiscal period shall be the sum determined under (c) of this paragraph plus the amount determined under (d) of this paragraph.

1928 Ex. Ses. ch. 24; 1924 ch. 132.

5028. TAX IS ADDITIONAL PERSONAL DEBT.—The tax herein imposed is in addition to all other taxes imposed by law, and every tax in addition to being a tax against the property, business, trade, profession, or occupation, shall also become from the time it is due and payable, a personal debt from the taxpayer liable to pay the same, to the State of Mississippi.

1924 ch. 132.

5031. NET LOSSES.—(a) As used in this section the term net loss, means only net losses resulting in the operation of any trade or business regularly carried on by the taxpayer, including losses sustained from the sale or other

disposition of real estate, machinery, and other capital assets used in the conduct of such trade or business.

(b) If for any taxable year it appears upon the production of evidence satisfactory to the commissioner that any taxpayer has sustained a net loss, the amount thereof shall be deducted from the net income of the taxpayer for the succeeding taxable year and if the net loss is in excess of the net income for such succeeding taxable year, the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding taxable year, the deduction in all cases to be made under regulations prescribed by the commissioner with the approval of the governor.

(c) The benefit of this section shall be allowed to members of partnership and the beneficiaries of any estate or trust, under regulations prescribed by the commissioner with the approval of the governor.

(d) It appears upon the production of evidence satisfactory to the commissioner, that a taxpayer having a fiscal year beginning in 1929 and ending in 1930 after the adoption of this chapter has sustained a net loss during such fiscal year, such taxpayer shall be entitled to the benefits of this section in respect to the same proportion to such net loss which the entire portion of such fiscal year falling within the calendar year 1930 after said adoption is of the entire fiscal year.

(e) The benefits of this section may be allowed for a period of three years from the date such loss is sustained, and not thereafter.

1924 ch. 132.

5033. GROSS INCOME DEFINED.—For the purposes except as otherwise provided for non-resident, the term gross income:

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind, and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real, or personal growing out of the ownership or the use of or any interest in such property, also interest, rent, dividends, securities or other transactions of any business carried on for gain or profit or gains, or profits, and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer; provided property sold upon what is known as the installment plan when the initial payment is twenty-five per centum or less, the income may be included for taxation in that portion of any installment payment representing gain or profit in the year in which payment is received.

(b) The term gross income, does not include the following items which shall be exempt from taxation hereunder:

(1) The proceeds of life insurance policies and contracts paid upon the death of the insured.

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(3) The value of property acquired by gift, bequests, devise or descent, but the income from such property shall be included in the gross income.

(4) Interest upon the obligations of the United States or its possessions or securities issued under the provisions of the federal farm loan act of July 17, 1916, or bonds issued by the war finance corporation or the obligations of the state of Mississippi or political subdivisions thereof or of any municipal corporation.

(5) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injury, or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(6) Salaries, wages, and other compensation received from the United States government or officials or employees thereof, including persons in the military or naval forces of the United States.

(7) Income received by any religious donomination or by any institution or trust for moral or mental improvement, religious, bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational scientific, literary, library, patriotic, historical or cemetery purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes if such income be used exclusively for carrying out one or more of such purposes.

(8) Income received during the taxable year as dividends from a corporation on which such corporation has already paid or is liable by assessment to pay an income tax, or dividends from a national bank or state bank organized under the laws of the state of Mississippi.

(9) In the case of taxpayers other than residents, gross income, includes gross income from sources within this state.

(10) In the case of life insurance companies there shall not be included in gross income such portion of any actual premium received from any individual policyholder as is paid back or credited to or treated as an abatement of premium of such policyholder within the taxable year.

(11) Income of a domestic corporation, when earned from sources without this state, and such sources shall be defined to mean places of manufacture or production and places of merchandising.

1918 Ex. Ses. ch. 32.

5034. DEDUCTIONS ALLOWED.—(a) In computing the net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business and including rentals or other payments required to be made as a condition to the continued use or possession for purposes of the trade or business, of property which the taxpayer has not or is not taking title or, in which he has no equity; and all necessary expenses incurred by those

forced to leave home in order to do the work they are employed to do.

(2) All interest paid or accrued during the taxable year on indebtedness, except interest upon indebtedness for the purchase of tax free bonds, or stock in a national bank or bank organized under the laws of the state of Mississippi.

(3) Taxes, other than income taxes, paid or accrued within the taxable year imposed; first by the authority of the United States or any of its possessions; second, by the authority of any state or territory, or any county, school district, drainage or levee district, municipality or other taxing subdivision of any state or territory; third by the authority of any foreign government.

(4) Losses sustained during the taxable year not compensated for by insurance or otherwise, if incurred in trade or business.

(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit though not connected with the trade or business; but in the case of a taxpayer other than a resident of the state, only such transactions in real property or in tangible personal property having an actual situs within the state.

(6) Losses sustained during the taxable year of property not connected with the trade or business of arising from fires, storms, shipwrecks, or other casualty or from theft, and not compensated for by insurance or otherwise.

(7) Debts ascertained to be worthless and charged off during the taxable year.

(8) A reasonable allowance for exhaustion, wear and tear of property used in the trade or business, and depreciation upon buildings based upon their reasonable value on March 16th, 1912, if acquired prior thereto, and upon cost if acquired subsequent to this date.

(9) In the case of timber a reasonable allowance for depletion based upon cost; provided it was acquired prior to March 16th, 1912, the fair market value on that date shall be taken in lieu of cost.

(10) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by law to an amount not in excess of ten per centum of the taxpayer's net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commissioner with the approval of the governor. In the case of a non-resident this deduction shall be allowed only as to contributions or gifts made to domestic corporations, or to such vacational rehabilitation fund.

(11) Contributions made within the taxable year to religious, charitable, scientific, or educational associations,

not incorporated, or to persons for exclusive use for religious, charitable, scientific or educational purposes, to be allowed under regulations and rules made by the commissioner with the approval of the governor, not exceeding ten per centum of the taxpayer's net income during the taxable year, without the benefits of this section; and the benefits of this section must be considered in connection with the preceding section in determining the amount of the deduction under this section and the next preceding section, and shall in no event exceed ten per centum of the taxpayer's net income without the benefits of this and the preceding section, provided further no receipt shall be demanded under such rules and regulations unless the commissioner shall have cause to believe that the deductions claimed under this section is (are) fraudulent.

(12) In the case of insurance companies the net additions required by law to be made within the taxable year to reserve funds.

(13) The sums other than dividends, paid within the taxable year on policy and annuity contracts.
1924 ch. 132.

5056. REVISION BY COMMISSIONER.—A taxpayer may apply to the commissioner for revision of the tax assessed against him, at any time within one year from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The commissioner shall grant a hearing thereon and if, upon such hearing, he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the

fact and adjust the computation of the tax accordingly. The commissioner shall notify the taxpayer of his determination and shall refund to the paxpayer the amount, if any, paid in excess of the tax found by him to be due. If the taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fradulent return, or having filed an incorrect return has failed, after notice, to file a proper return, the commissioner shall not reduce the tax below the amount for which thetaxpayer is found to be properly assessed.

After the time for making of the returns by taxpayers in each year has passed the state tax commission shall arrange for hearings at the state capitol and give such notice thereof as may be deemed requisite. The expense of such hearings shall be paid out of funds appropriated for the enforcement of this chapter including the traveling expenses of the members of the commission and its necessary employees. The members of the state tax commission shall constitute a quorum at such hearings.

1924 ch. 132.

5057. RREHEARING.—In all hearings before the commission, under this chapter, oral, documentary and other evidence may be introduced by either party and the findings of the commission shall be final unless the taxpayer, or the state, by the attorney-general, shall, within thirty days from the date of the receipt of notice of such findings, file a petition in the chancery court of Hinds County, at the seat of government, requesting a hearing of the case on its merits, which petition shall be a concise statement of the

facts as contended for by the party dissatisfied with the findings of the commission. If the taxpayer be the party filing said petition it shall be accompanied with a bond, to be approved by the clerk of said court, in a sum double the amount in controversy, conditioned to pay the judgment of the court. On filing such petition the clerk of the court shall give the opposite party (the attorney-general, if the petition is filed by the taxpayer) notice of the proceedings as required by law. The chancery court shall have jurisdiction to hear and determine said cause, or issue joined, as in other cases. If the petition be filed by the attorney-general for the state, and the taxpayer be not a citizen of Hinds County, on the application of the taxpayer, the suit shall be transferred to the county in this state of which the taxpayer is a citizen. Or the attorney-general may file this petition in the first instance in the chancery court of the county of which such taxpayer is a citizen, which court in either case shall have jurisdiction to hear and determine the case on issues joined therein. Either the state or the taxpayer, or both, shall have the right of appeal to the Supreme Court, as in other cases.

1924 ch. 132.

APPENDIX II.

Constitution of the State of Mississippi

Section 112. Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Prop-

erty shall be assessed for taxes under general laws, and by uniform rules, according to its true value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroads and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county.

APPENDIX III.

MISSISSIPPI CODE 1930 ANNOTATED. Chapter 61. REVENUE.

3108. WHAT PROPERTY EXEMPT.—The following shall be exempt from taxation:

. . . . . .

(x) Any and all money on deposit in either national banks, state banks or trust companies, on open account, savings account and time deposit.

1928 ch. 185; 6878; 4251; 3744; 468, 1662; ch. 3 art. 11; ch. 8 art. 2 (1).

APPENDIX IV.

Sec. 28. TAXATION OF PROPERTY, MERCHANTS, PEDDLERS, PRIVILEGES, POLLS, AND INCOMES FROM STOCKS AND BONDS NOT TAXED.—All property real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the state, by counties, cities or towns, and used exclusively for public or

corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars' worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer, and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value, but the legislature shall have power to tax merchants, peddlers and privileges, in such manner as they may from time to time direct. The portion of a merchant's capital used in the purchase of merchandise sold by him to non-residents and sent beyond the state, shall not be taxed at a rate righer than the ad valorem tax on property. The legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem. All male citizens of this state over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity shall be liable to a poll tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll tax exceeding the amount levied by the state.

APPENDIX V.

Sec. 54. CONTRACTORS.—Upon each person who for a fixed price, commission, fee, or wage, undertakes or executes a contract for the construction, or who superintends the construction of any building, highway, street,

sidewalk, bridge, culvert, sewer, or water system, drainage or dredging system, electric or steam railway, reservoir, or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of $5,000.00, at the time of entering into such project, and/or before undertaking the construction or superintending of such contract, a state-wide tax as follows:

When the contract price or estimated cost of such project is over:

$5,000.00, or not more than $10,000.00	$ 20.00
$10,000.00, and not more than $50,000.00	$ 50.00
$50,000.00, and not more than $100,000.00	$100.00
$100,000.00 and not more than $250,000.00	$200.00
$250,000.00 and not more than $500,000.00	$300.00
$500,000.00 and not more than $750,000.00	$400.00
$750,000.00 and not more than $1,000,000.00	$500.00
More than $1,000,000.00	$600.00